

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JAMAAL A. McNEIL,)) Plaintiff,)) v.)) THE UNITED STATES OF AMERICA, et al.,)) Defendants.)	CASE NO. 4:09CV3115 MEMORANDUM AND ORDER
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This matter is before the court on its own motion. On June 24, 2009, the court required Plaintiff to show cause why he is entitled to proceed in forma pauperis ("IFP") pursuant to the provisions of [28 U.S.C. §1915\(g\)](#). (Filing No. [15](#).) Plaintiff filed a Response to the court's Memorandum and Order. (Filing No. [18](#).) The court has carefully reviewed Plaintiff's Response and finds that this matter should be dismissed.

I. BACKGROUND

Plaintiff, while incarcerated, filed a Complaint (filing no. [1](#)) and a Motion for Leave to Proceed IFP (filing no. [2](#)) on June 4, 2009. On June 24, 2009, the court ordered Plaintiff to either show cause why he is entitled to proceed IFP or pay the full \$350 filing fee by July 24, 2009, or his case would be dismissed. (Filing No. [15](#).) The court's order was based on the provisions set forth in [§ 1915\(g\)](#), and also the court's finding that Plaintiff brought the following three cases while incarcerated, all of which were dismissed for failure to state a claim upon which relief may be granted:

- *McNeil v. Public Defender Office*, No. 4:06CV3204 (D. Neb.), dismissed on September 5, 2006. (Case No. 4:06CV3204, Filing Nos. [5](#) and [6](#).)
- *McNeil v. City of Omaha, et al.*, No. 8:07CV145 (D. Neb.), dismissed on May 16, 2007. (Case No. 8:07CV145, Filing Nos. [12](#) and [13](#).)

- *McNeil v. City of Omaha, et al.*, No. 8:07CV143 (D. Neb.), dismissed on August 26, 2008. (Case No. 8:07CV143, Filing Nos. [53](#) and [54](#).)

On July 2, 2009, Plaintiff filed a Response to the court's Memorandum and Order in which he generally objected to the June 24, 2009, Memorandum and Order and argued the merits of the three previously-dismissed cases set forth above. (Filing No. [18](#).)

II. ANALYSIS

A prisoner may not bring a civil action or proceed IFP if the prisoner has, on three or more occasions, while incarcerated, brought an action or appeal in federal court that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted. [§ 1915\(g\)](#). An exception is made for prisoners who are under imminent danger of serious physical injury. [Id.](#)

In its previous Memorandum and Order, the court ordered Plaintiff to show cause why his case should not be dismissed pursuant to [§ 1915\(g\)](#). (Filing No. [15](#).) The court listed three cases brought by Plaintiff that were dismissed because they failed to state a claim upon which relief may be granted. ([Id.](#) at CM/ECF p. 1.) For Plaintiff to proceed IFP, he needed to show the court that any or all of the three dismissed cases do not meet the criteria set forth in [§ 1915\(g\)](#) or, alternatively, that he faces imminent danger of serious physical injury.

In his Response, Plaintiff did not deny that, while incarcerated, he filed three cases that were dismissed because they failed to state a claim upon which relief may be granted. He also did not allege that he faces any danger of physical injury. Instead, he argued the merits of the previously-dismissed cases and stated that these three cases "will be overturned." (Filing No. [18](#) at CM/ECF p. 2.) However, none of these three cases is

currently pending on appeal, and the time to appeal these matters expired long ago. Therefore, Plaintiff has not shown that he is entitled to proceed IFP, nor has he paid the full \$350 filing fee. For these reasons, this matter must be dismissed.

IT IS THEREFORE ORDERED that:

1. This matter is dismissed without prejudice;
2. A separate judgment will be entered in accordance with this Memorandum and Order; and
3. All pending motions are denied as moot.

DATED this 20th day of July, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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